82-180

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In The

SUPREME COURT OF THE UNITED STATES
July Term, 1982

NO.

BENJAMIN A. RASKY,
Plaintiff-Appellant,
Petitioner,

vs.

COLUMBIA BROADCASTING SYSTEM, INC., a/k/a CBS-WBBM, a corporation, SUSAN ANDERSON, ELLIS B. LEVIN, EDGEWATER COMMUNITY COUNCIL, ORGANIZATION OF THE NORTHEAST, EDGEWATER RESIDENTS TOGETHER IN ACTION, 5600 BLOCK CLUB OF WINTHROP, a corporation, MARION VOLINI, LEROY BLOMMAERT, DALE BURTON, GLORIA BITTNER (a/k/a BITTNER) DAVID WALKER, FABIO RINCON, KELLY SANDERS, ALBERT GRIFFIN, and unknown officers and directors of the foregoing community organizations, CHICAGO READER, INC., a corporation, and DON ROSE,
Defendants-Appellees,
Respondents.

# PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT, FIRST DIVISION

BENJAMIN A. RASKY, Pro Se
Plaintiff-Appellant,Petitioner
5104 West Weber Lane
Skokie, Illinois 60076
Attorney for Petitioner

## QUESTIONS PRESENTED

1. Whether Plaintiff was denied Due Process of Law as provided in Section 1 of Amendment XIV of the U. S. Constitution as a result of being precluded from receiving a trial on the merits of his claim in Counts I, II, VI and VII for Libel Per Se when the Court dismissed said Counts based on its application of the Illinois Rule of Innocent Construction contrary to Plaintiff's contention that the Rule did not apply to this case..

2. Whether Plaintiff was denied Due Process of Law by the bias and prejudice of the two Trial Judges against him whereby Plaintiff's Complaint was dismissed on Motions of Defendants on the Pleadings only, not receiving a trial on the merits in his three Notices of Appeal

filed by him, the first two being from Orders dismissing the Complaint, and third Appeal from the Order dismissing the Complaint against a Defendant Albert Griffin with prejudice, when Plaintiff had suggested in open Court the prior death of Griffin which was unknown to the other Defendants and moved to dismiss the Complaint against him without prejudice. There had been no prior determination of Griffin's Motion to Dismiss, or trial on the merits, the Order of Dismissal with prejudice being intended to prevent Plaintiff from proving the charge of Trespass and the invasion of the right of privacy against the remaining Defendants.

3. Whether Plaintiff was denied due process of law in being precluded from receiving a trial on the merits when the Court erroneously dismissed Plaintiff's Complaint on Defendants' Motions on grounds that it did not set forth a good cause of action.

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COLUMBIA BROADCASTING SYSTEM, INC.,
a/k/a CBS-WBBM, Et Al (Same As on Cover),
Defendants-Appellees,
Respondents.

# PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT, FIRST DIVISION

To the Justices of the Supreme Court of the United States:

Petitioner, Benjamin A. Rasky, respectfully prays that a Writ of Certiorari issue to review the judgment of the Appellate Court of Illinois, First District, First Division, of November 23, 1981, affirming the Orders of the Circuit Court of Cook County, Illinois dismissing Plaintiff's

claim against all Defendants in this suit on their Motions on the Pleadings only, no trial having been had. Plaintiff's Complaint at Law set forth five Counts, I, II, III, IV and V, and the First Amendment thereto set forth two Counts, VI and VII, Counts I, II, VI and VII being for Libel, III for Trespass, IV for Invasion of Right of Privacy, and V for Conspiracy.

## OPINIONS BELOW.

The opinion of the Appellate Court is reported as 103 Ill.App.3d 577, reproduced in Appendix "A" to this Petition. Plaintiff's Petition for Leave to Appeal to the Illinois Supreme Court was denied on May 28, 1982, Appendix "B".

## JURISDICTION.

The judgment of the Appellate Court of Illinois was entered on November 23, 1981. A

Petition for Rehearing was denied on February 1, 1982. The jurisdiction of this Court rests on 28 U.S.C. §1257(3).

## PARTIES.

All parties to this proceeding are set forth on the cover.

## STATEMENT OF THE CASE.

Plaintiff's Complaint at Law sets forth five Counts, I, II, III, IV, V and the First Amendment to Complaint sets forth two Counts, VI and VII for Libel, Counts I and II also being for Libel, Count III for Trespass, IV for Invasion of Right of Privacy, and V for Conspiracy. All of the Counts allege that, prior to the alleged occurences, Plaintiff was an attorney at law in Chicago, Illinois since 1929, an owner and operator of real estate for purposes of investment, a person of good reputation and name and deservedly held in high esteem in the community. Maliciously intending to injure and ruin him, as charged in the various Counts, in the operation of his Real Estate and Profession as a Lawyer, the Defendants unlawfully and without authority from

Plaintiff, entered on February 18, 1977, his building at 5625 Winthrop (Count I) set up equipment for transmission over Television Channel 2, took pictures of the building, and unlawfully broadcast the following false slander and libel against him "Factfinder Report Aired on WBBM-TV 2/18/77": to-wit:

> "ANDERSON: There's a law on the books which makes it a crime for a landlord to neglect his property and jeopardize the health and safety of his tenants. That law has never been used, until now. Citizens of the Edgewater community -- primarily those who live in the Kenmore-Winthrop corridor -- are now using this law to strike back. People here are fed up with their neighborhood deteriorating. One eyesore they've targeted is Touraine. The building's owner is Benjamin Rasky, a La Salle Street lawyer. Edgewater citizens say Rasky is a slumlord. To back up their charge, they point to falling plaster, peeling paint, exposed wiring and rats. One tenant here is Albert Griffin.
>
> GRIFFIN: I noticed the toilet wouldn't flush, so I tried the facebowl. There weren't no water. Then I tried the bathtub -- no water. (At this point, Mr. Griffin made a point concerning the controls under the sink which was inaudible.)
>
> ANDERSON: And how much have you paid for this place? What's the rent?

GRIFFIN: One-hundred and twenty-five dollars.

ANDERSON: That one-hundred and twenty-five dollars figure is the maximum public aid lets its recipients pay for a so-called furnished apartment. Residents who live near this building say it was an attractive place... that is, until Rasky took it over three years ago. Dave Walker, Edgewater Community Council...

WALKER: He just milked this building for whatever he could get out of it. He hasn't put anything into it. And, a building of this size, it's attracted the types of persons that are perpetrating much of the crime in this area.

ANDERSON: The citizens here have hauled Rasky into housing court for years...but they say he merely pays the fines for building violations as a cost of doing business and never bothers with repairs. At that point, the district's state representative found the slumlord law on the books. The result? Today, the state filed a complaint. Ellis Levin, 12th District Representative...

LEVIN: Clearly, in cases like this, the traditional remedies, uh, building court and also criminal housing management are just not working. And so, you know, through the approach of going after an individual's livelihood, his real estate license, hopefully we'll be able to exert an awful lot more influence in the future. It's a new vehicle, available to government and available to community groups.

ANDERSON: If Rasky is found guilty, his real estate license can be revoked. That means he can no longer buy, sell, rent or manage any property ever again in this state. Rasky was too ill to be interviewed today but he did tell me he is not a slumlord. He says he's been plagued with people who have moved in as squatters, with building managers who have pocketed his rents and with police who have not curbed the vandals and hoodlums. Walter.....

Included are the following false utterances of slander and libel (Record 4): claimed to be Libel Per Se:

SUSAN ANDERSON: (duly authorized agent of the Defendant Columbia Broadcasting System CBS-WBBM):'. . . (referring to Plaintiff) Edgewater citizens say Rasky is a slumlord. To back up their charge, they point to falling plaster, peeling paint, exposed wiring and rats. One tenant here is Albert Griffin.

GRIFFIN: 'I noticed the toilet wouldn't flush, so I tried the facebowl. Then I tried the bathtub -- no water.'

ANDERSON: 'And how much have you paid for this place? What's the rent?'

GRIFFIN: 'One-Hundred and twenty-five dollars.'

ANDERSON: 'Dave Walker, Edgewater Community Council.'

WALKER: 'He just milked this building for

whatever he could get out of it. He hasn't put anything into it. And, a building of this size, it's attracted the types of persons that are perpetrating much of the crime of this area.'

ANDERSON: The citizens here have hauled Rasky into housing Court for years... but they say he merely pays the fines for building violations as a cost of doing business and never bothers with repairs. At that point, the district's state representative found the slumlord law on the books. The result? Today, the state filed a complaint. Ellis Levin, 12th District Representative ..."

Defendant Walker was the duly authorized agent of the defendants Edgewater Community Council, Volini and others.

Count II repeats Count I adding further libelous statements, including those of defendant Levin concerning the Plaintiff:

"I hope this will set a strong precedent for the future widespread use of this rule in the fight against slum landlords" and: "The case would prove to be a landmark that opens up a whole new way to go after slum landlords (Rec.4-5)."

Count III is a charge of Trespass committed by the defendants in wrongfully entering Plaintiff's building to commit the above acts.

Count IV is the same as Count III except charging an Invasion of the Right of Privacy.

Count V is a claim for Conspiracy that all of the original defendants, excluding CBS and Anderson, on February 27, 1976, entered into a conspiracy against Plaintiff to injure and ruin him as aforesaid by a campaign of harrassment, creation of false and harmful publicity creating dissension and destruction and refusal by tenants to pay rent, posting false and vicious signs in his buildings and creating false publicity throug medium of newspapers, TV and radio broadcasting to include February 18, 1977, T.V. broadcast, set forth in Count I. Count VI of first amendment is a claim for libel against Levin consisting of a News Bulletin distributed by him on December 11, 1977, stating the following:

> "FIRST COMPLAINT FILED TO REVOKE SLUMLORD'S REAL ESTATE LICENSE. A new method for combatting slum landlords was developed when Rep. Levin, Edgewater Community Council Safety Program and Edgewater Residents Together In Action (ERTA) filed the first complaint with the Ill.Dept. of Registration and Education to revoke a landlord's real estate broker license.
>
> The approach is aimed at stopping slum

> landlords when Building Court fails. 'If a slumlord's license is threatened,' Levin said, 'he is more likely to clean up the building.' The complaint charged that Benjamin A. Rasky operated four buildings with dangerous conditions and several hundred building code violations at 5303-09, 5621-25 and 5726-28 Winthrop and at 832 Gunnison."

and Count VII is a claim for Libel vs Chicago Reader and Don Rose for the publication in the Reader on November 11, 1977, of the false libel against Plaintiff stating the following:

"Why Ellis Levin is a Marked Man" containing the following false libel of and concerning the Plaintiff:

> "One agency he recently got to do its job is the Illinois Department of Registration and Education, which licenses real estate operators but never saw fit to crack down on slum landlords until Levin lit the fuse. The result: for the first time in history a slum landlord operating in Uptown, Benjamin A. Rasky, is under the gun to fix up his places or lose his license."

All of the Defendants filed Motions to Dismiss Plaintiff's Complaint setting forth contentions that Counts I, II, VI and VII were unenforceable under the Illinois Rule of Innocent Construc-

tion, and Counts III, IV and V failed to allege a good cause of action.

In the TV Broadcast of February 18, 1977, Defendant Anderson refers to Defendant Albert Griffin being a tenant in the building. The reference to his being a tenant was false. Griffin was not a tenant in the building on the date of the broadcast and did not pay any $125.00 rent mentioned in the broadcast. He had been evicted by the Plaintiff from the building following a Judgment for Possession against him on May 4, 1973 in case No. 73M 64024 Circuit Court for non-payment of rent. He was refused readmission thereafter. He had been suspected of improper conduct because of too many callers, the building being a furnished apartment hotel. He was a trespasser on February 18, 1977 as were all the other Defendants, his alleged invitees.

The matter was on call for hearing on May

17, 1979 of Defendants' Motion to Dismiss Plaintiff's Complaint before Paul V. Elward. Plaintiff moved for a postponement of the hearing by reason of illness to which there was no objection.

Defendant Griffin's counsel then suggested that the matter be heard on Pleadings and not orally, Plaintiff then stated that Griffin's counsel need not argue further and then suggested the prior death of Griffin on August 1, 1978 (which his counsel did not know) and moved to dismiss without prejudice the Complaint against Griffin. Plaintiff then offered to draft the Order, to include a new hearing date of June 27, 1979, but counsel for Defendants CBS and Anderson, Attorneys Reuben & Proctor, of which Don Reuben is the head, suggested drawing the Order.

Judge Elward thereupon directed Reuben & Proctor to draft the Order and return it to Court in the afternoon. That firm was not counsel for

Griffin. When Plaintiff appeared in Court in the afternoon, he noticed that the Order dismissing the Complaint was with prejudice, the Order having been entered out of his presence.

The entry of the dismissal against Griffin with prejudice is very damaging to Plaintiff's being able to prove his case. Plaintiff learned later that Don Reuben is Judge Elward's personal Attorney, of which Plaintiff was unaware.

On June 21, 1979, Plaintiff moved for a Change of Venue before Judge Elward which was denied on June 24, 1979. Thereafter, on August 7, 1979 Judge Elward recused himself from the case on a Petition by Attorneys Reuben & Proctor on the ground that he had retained them on July 30, 1979 to represent him personally in a personal case. Plaintiff then learned that Don Reuben represented Judge Elward in a matter before the Judicial Inquiry Board on February 9,

1977 which anteceded Plaintiff's lawsuit. These allegations were set forth in Plaintiff's Motion on February 4, 1980 to vacate the Order of May 17, 1979 before Judge Elward and who transferred the hearing to Judge Myron Gomberg who denied Plaintiff's Motion on February 15, 1980, now on appeal.

Every Motion presented by Defendants before Judges Elward and Gomberg were granted summarily without permitting argument by Plaintiff. Included was one presented on April 24, 1980 to dismiss the Complaint with prejudice by the Organization of the Northeast (Rec.284-285) where Defendants' counsel inserted four times "Plaintiff Rasky stating that he had no objection to said Motion to Dismiss with Prejudice". Plaintiff tried to say that he would not argue the Motion, and started to run a line through the first such recitation, so as to state his objections to it. Defendants' counsel grabbed the Order away from the Plain-

tiff and rushed to Judge Gomberg for his signature, which he signed at once. When Plaintiff tried to argue against the Order, Judge Gomberg threatened to call the Sheriff.

When Plaintiff purchased the building in 1972 he learned that the managing couple were collecting unauthorized security deposits of $50.00 without the knowledge of the owner, Warren, and converted said sums to their own use. As a consequence, unscreened tenants were permitted to rent, resulting in immoral and criminal practices taking place. Open solicitation for prostitution was the result, with renting by the night.

The managing couple was immediately discharged, a new manager was engaged, with a Security Guard and the Police alerted. Order and decency was restored by such move by the Plaintiff.

All of the Defendants' Motions to Dismiss, and otherwise, were sustained.

As a supplement to the statement of the case to reiterate Plaintiff's problems in trying to manage the buildings:

An example was the building at 5726 North Winthrop. It was in Housing Court for building violations. Plaintiff spent over $25,000.00 to rehabilitate it. The Housing Court case was dismissed as complied on September 26, 1976. One month later, the building was wrecked again. Plaintiff collapsed and he thereupon entered a hospital for open heart surgery as herein noted.

## REASONS FOR GRANTING WRIT.

Petitioner respectfully submits that the Appellate Court of Illinois erred in affirming the decisions of the Circuit Court which dismissed his Complaint, and otherwise, for the following reasons: (1) Counts I, II, VI and VII on the ground of the application of the Illinois Rule of Innocent Construction; they are Libel Per Se, being defamatory on its face, which, if true, would constitute commission of criminal offenses by him of "Criminal Housing Management" (Chap.38,Sec.12-5.1 Criminal Code, Ill.Stats.), which on conviction, could subject him to imprisonment of up to one year, and a fine of up to $1,000.00 or both, as well as other criminal offenses; also, a charge of unfitness in the occupation in which he was engaged (the operation of real estate), and the false charges also affected injuriously Plaintiff in his profession as a Lawyer (though Libel per quod

in the latter); (2) Dismissing Counts III, IV and V for failure to allege a cause of action; and (3) in denying Plaintiff's Petition under Sec. 72 of the Illinois Civil Practice Act (for errors of fact not of record) to vacate the Griffin Dismissal "with prejudice"when it should have been "without prejudice", as he had moved, for no adjudication was ever made on the merits. "A dismissal with prejudice denotes an adjudication on the merits and is res judicata."

Bernhardt v. Fritzshall, 9 Ill.App.3d 1041

Esquire, Inc. v. Varga Enterprises, 185 F.2d 14

It was a denial of due process of law, Sec. 1 of Amendment XIV, U. S. Constitution.

A leading case on Slander and Libel, Whitby v. Associates Disc.Corp. 59 Ill.App.2d 337 (1965) provides:

Slander and Libel (Per Se) - five classes of words give rise to cause of action for Slander if falsely communicated: (1) those imparting

commission of a criminal offense; (2) those imparting infection with communicable disease tending to exclude one from society; (3) those imparting inability to perform or want of integrity in discharge of duties of office or employment; (4) those prejudicing a particular party in his profession or trade, (5) Defamatory words which though not in themselves actionable occasioned the party special damages (the 5th Class does not apply to libel per se. Libel per se cases require no allegation of proof of special damages. Yet Plaintiff did submit such proof in his Answer, and Affidavit in Support, of special damages.

Criminal Housing Management in the Statute is defined:

> A person commits the offense of Criminal Housing Management when, having personal management or control of residential real estate,.....he knowingly permits by his gross carelessness a neglect of the physical condition or facilities to become or remain so deteriorated that the health or safety of any inhabitant is endangered.

Although the Court is well aware of Sec.1, Amendment XIV of the U.S.Constitution, referring to Due Process of the Law, in the light of Plaintiff's claim, the applicable provision is the following:

> .....No State shall invoke or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Court should note that, with the exception of its Decision on Libel, the other three charges are cited passively by the Appellate Court on Page 1, Paragraph 2 of its Opinion, as follows:

On appeal, Plaintiff claims that the trial Court erred in dismissing Plaintiff's Complaint charging Defendants with defamation, trespass and invasion of privacy. We have considered Plaintiff's arguments regarding the trespass and invasion of privacy issues and find them

to be without merit. We will, therefore, limit our discussion to the defamation issues raised by Plaintiff.

We affirm.

Nothing was mentioned on Conspiracy (Count V), the prejudice of the trial Judges against Plaintiff to his injury, or otherwise; all that was error, and a denial of due process of law.

The Court should bear in mind the Illinois Rule of Innocent Construction which provides:

> "Libel - words alleged to be libelous must be read innocently if entire context warrants. In a suit for damages for an alleged libelous publication, the article is to be read as a whole and the words given their natural and obvious meaning and words allegedly libelous that are capable of being read innocently must be so read and declared non-actionable as a matter of law."
>
> John v. Tribune, 24 Ill.2d 457 (1962)
> Valentine v. North American Co.
> 60 Ill.2d 168

However, the Rule does not apply to this case. In its determined effort to find that the Libel comes under the Illinois Rule of Innocent Construction and thereby dismiss Appellant's (Petitioner's) Complaint, the Court only cited law to support it in its decision. Such action was a denial of due process of law as guaranteed Plaintiff under Sec. 1, Amendment XIV of the U. S. Constitution.

Evidence of that is the following (on Page 5 of its Opinion) :

> "In order to determine whether particular language constitutes libel per se, Illinois Courts employ the 'rule of innocent construction.' The rule holds that an allegedly libelous statement is to be read as a whole and the words given their natural and obvious meaning, and requires that words allegedly libelous that are capable of being read innocently must be so read and declared non-actionable as a matter of law. (Valentine v. North American Co., etc. 60 Ill.2d 168....John v. Tribune 24 Ill. 2d 437. If a statement is capable of two constructions, one of them defamatory and the other innocent, the innocent construction must be so chosen."

The foregoing is not the complete John v. Tribune decision. Before the recitation "the article"(statement here) is to be read as a whole, John states "words alleged to be libelous must be read innocently if entire context warrants."

Neither is the foregoing the complete Valentine decision which provides:

> "Defamation....in a defamation suit the intent and meaning of the statement must be determined from its context. The legal effect of a statement cannot be considered independently from the entire conversation of which it was a part, and the intent and meaning of a statement

> claimed to be defamatory must be determined from the context of the entire statement."

Contrary to Defendant Anderson's false allegations that "he merely pays the fines for building violations as a cost of doing business and never bothers with repairs", and Defendant Walker's false allegations that "he just milked this building for whatever he could get out of it; he hasn't put anything into it," the Plaintiff never paid any fines at the time of the TV Broadcast; that as a result of Plaintiff's great difficulties in trying to operate the buildings in a changing area with great vandalism with little, finally no income to meet expenses, he sustained operating losses of $152,543.00 from 1975-77, mortgage foreclosure loss of $80,000.00, loss in forced sale of two buildings of $253,000.00 and $47,530.00 loss in 1978, totalling in all losses of $533,073.00. Plaintiff collapsed, underwent open-heart surgery and had to sacrifice the buildings by reason of

the premises. The Rule of Innocent Construction should not apply here.

Contrary to Anderson's false allegations, that Residents who live near this building say it was an attractive place.....that is, until Rasky took it over three years ago", as Plaintiff mentioned in his "Statement of the Case", upon his purchase of it, he learned that it was veritably 'a house of prostitution', and he was compelled to discharge the managers under the previous ownership and put it in order. The Rule of Innocent Construction should not apply here.

Contrary to Anderson's false statement "One tenant here is Albert Griffin";Griffin was not a tenant on the date of the broadcast, having been evicted in 1973, and did not pay any rent and was a trespasser as were all of his invitees." And her statement "Edgewater citizens say Rasky is a slumlord"were untrue. Her statements of attempting to interview Plainti

are false. The Rule of Innocent Construction should not apply here.

Statements in the Conspiracy charges by Plaintiff, Count V.

"Slumlords like Ben Rasky are destroying buildings along Kenmore and Winthrop; Rasky has milked and abandoned buildings in the 5300, 5600 and 5700 Blocks of Winthrop; that he never bothers to pay taxes," are false. He never had any buildings on Kenmore, and never abandoned the buildings on Winthrop. In the large buildings Plaintiff owned, he paid all taxes, leaving only one small item for which he filed a Certificate of Error Procedure for 1973 taxes, and paid it immediately on the adjudication of $2,987.00 as being due.

Similarly, the Court in its determination to apply the Rule of Innocent Construction (Opinion 6) defines Slumlord and Slum Landlord from the definition by Black's Law Dictionary of a Slum as one who "owned buildings in a poor

and dirty neighborhood or, simply stated that Plaintiff was a landlord in a slum".

If that is to be taken as a correct definition, then the owners of many fine buildings in Chicago "in poor and dirty neighborhoods" can be considered to be "slumlords". A more adequate definition of slumlord is set forth in Webster's New World Dictionary which defines "slumlord" as an absentee landlord of slum dwellings especially one who charges inflated rents and neglects upkeep".

Plaintiff did not fit that definition nor the charges of Defendants CBS, Ellis Levin, Chicago Reader and Don Rose of his being a Slumlord. The Rule of Innocent Construction should not apply here.

Yet the Court ignored it and citations from American Law Reports (49 ALR 3d 1074). In one case the Court held that it was libelous <u>per se</u> to charge that a housing project was becoming a

slum (Munhall Homestead Hsg. Ass'n. v. Missinger,Dist.Co.25 Pa.D C.2d 1). Another case held that it was slanderous to accuse a landlord of being a "Black Marketeer" (Notamuzzi v. Shevack,Sup. 108 N.Y.S.2d 172), and slanderous per se. The latter case in effect was the false imputation on the part of Defendant Anderson on her interview with Griffin where she asked him how much rent he paid for the place. He told her $125.00, whereupon she said - "That $125.00 figure is the maximum Public Aid lets its recipients pay for a so-called furnished apartment."

Griffin's statement was false for he was not a tenant on the date of the broadcast and did not pay $125.00 rent mentioned in the broadcast. He had been evicted in 1973 as previously set forth in Pages 12-15 herein and was a Trespasser as was the CBS and all the other Defendants. Plaintiff sets forth good causes of action in Counts III and IV for Trespass

and Invasion of Right of Privacy and V for Conspiracy (in the latter, CBS and Anderson are not Defendants), the Complaint being in the Record.

Counts III, IV and V contained such information as reasonably informed the Defendants of the nature of the claim which they were called upon to meet.

Heuer v. Davis, 336 Ill.App.224

Parrino v. Landon, 8 Ill.2d 468

As set forth in Pages 13[14] and 18 hereof and elsewhere, there was no adjudication on the merits to warrant dismissal of the Complaint against Griffin with prejudice. Because there was no trial, the Complaint being determined on Pleadings only, Plaintiff had the privilege at any time to dismiss the Complaint without prejudice as requested by him. The Order of February 15, 1980 was entered improperly as was the Order of May 17, 1980. The bias and hostility of Judges Elward and Gomberg against

Plaintiff are set forth therein as well as on Pages 13-16 herein. Both trial Judges, Elward and Gomberg should have disqualified themselves because of their bias towards Plaintiff and Judge Elward's relationship with Attorney Don Reuben, the CBS-Susan Anderson Counsel.

Fairness requires absence of actual bias in the trial of cases.

> Hobson v. Hansen, 265 F.Supp.902 (1967)
>
> "Bias or prejudice is a ground for disqualifying a Judge from hearing a cause."
>
> People v. St. Louis Merchants Bridge Co., 282 Ill. 408

It was a denial to Plaintiff of Due Process of Law, Sec. 1, Amendment XIV, U.S.Constitution. Error was committed accordingly.

The Court seems to treat too lightly the harmful effects of defamation of character of the person vilified, here the Plaintiff, in attempting to apply the Rule of Innocent Con-

struction, used in Illinois, for the purpose of declaring claims in Slander and Libel non-actionable by reason thereof. Long-lasting injury may be the natural consequence therefrom to the persons vilified, here the Plaintiff. And the Plaintiff has sustained such injuries as a direct result of the conduct of the Defendants.

The libelous utterances of the Defendants of and concerning the Plaintiff must be determined from the context of the entire statements. Although the context of the entire statements of the Defendants were libelous, being per se, except for the reference to the Plaintiff as "a LaSalle St. Lawyer", which was libelous per quod, yet the Courts, both trial and Appellate, arbitrarily used the application of the Illinois Rule of Innocent Construction in making their decisions. They thereby declared erroneously the statements

non-actionable and dismissed Plaintiff's claims. There was no justifiable reason for the application of the Rule other than to deny Plaintiff the right to a trial which was his due.

> "The absolute fundamentals of 'due process of law', are jurisdiction, adequate notice and a fair hearing."
>
> U. S. v. Parcels of Land (40 F.Supp.136 (1941)

Denial of due process is conduct that shocks conscience and offends sense of justice.

Buder v. Bell, 306 F.2d 71 (1962)

The use of the Rule of Innocent Construction, as used here, was a denial of due process of law in violation of the 14th Amendment,Sec. 1 of the U. S. Constitution.

The questions of the unconstitutionality of the Orders of Dismissal of the Complaint or otherwise by the Trial Court on Pleadings only were raised on oral comment by Plaintiff during

hearings, and raised in the Appeal to the Appellate Court of Illinois in Plaintiff's filing of the Docketing Statement on June 12, 1980, in his Brief and Argument and every other Pleading thereafter.

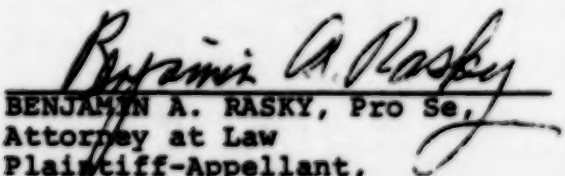
This action was brought by Plaintiff, pro se, to recover damages against the Defendants by a Complaint in five Counts, I and II for Libel, III for Trespass, IV for Invasion of Right of Privacy, V for Conspiracy, and a First Amendment to the Complaint labeled Counts VI and VII for Libel. The first five Counts were never amended, Attorney's Orders were entered thereon as though amended. Count I is still pending without any Orders of Dismissal or otherwise against all of the original Defendants, as is Count II against all, but the Organization of the Northeast. Counts III and IV are still pending against all the original Defendants, except Volini, Bittner

and Edgewater Residents Together In Action. Count V is pending against Levin, Edgewater Community Counsel and Walker. As to these Counts and Defendants, the Court accordingly erred in any event.

## CONCLUSION.

WHEREFORE, Plaintiff-Appellant, the Petitioner herein, respectfully prays that this Court's Writ of Certiorari issue and the Judgment below be reversed, and the Cause be remanded to the Circuit Court of Cook County for trial.

Respectfully Submitted,



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